

SUBJECT: Eliminating the public advocate in the Texas Department of Water Resources

COMMITTEE: Natural Resources: favorable, without amendment

VOTE: 7 ayes--Craddick, Looney, Jerry Clark, Close, Geistweidt, Massey, Patterson

1 nay--M. Garcia

1 present, not voting--Salinas

2 absent--J. Edwards, Ragsdale

WITNESSES: For--NONE

Against--Jack Cox, Public Interest Advocate, Texas Department of Water Resources; Al Endsley; Stuart Henry, representing the Sierra Club

DIGEST: This bill abolishes the position of public interest advocate in the Department of Water Resources.

PRO: The Department of Water Resources is the only state agency with a public interest advocate. This office is not needed. The department already has a general counsel who can handle some of the prescribed duties. Private attorneys can handle the rest. The state should not be in competition with private attorneys. The office is not funded in CSHB 558, the House version of appropriations for 1980-81. The change will save approximately \$50,000 per year.

The Water Code does not specify clear guidelines describing the role of the public interest advocate, so it is hard to tell exactly what the job should consist of or how well it is being done. The code requires that the advocate be a party to all proceedings before the department. This rule can result in inefficiency and questions of legality if the advocate is unable to be present at some proceedings.

CON: The public interest advocate's office has helped average citizens get a fair hearing. Water Commission hearings are conducted under the adversary system. The General Counsel takes the position of the Executive Director, which is developed before a public hearing. This position usually agrees with applications to discharge sewage or appropriate state water. Applicants rarely give adequate consideration to the public interest. Someone has to represent the people. What about the downstream property owner who doesn't want sewage in his or her creek, but can't afford a high-priced private attorney?

CON (cont.): The public interest advocate consults with citizens appearing at public hearings, to explain the rules and help make their testimony clear and pertinent. Occasionally he helps with the preparation of testimony. He assists in the examination of witnesses, to clarify doubtful points. Occasionally he makes specific recommendations to the commission, as appropriate to his responsibilities. He responds to citizens' requests for information and assistance concerning proceedings of the department.

Specifying the functions of the public interest advocate is the responsibility of the Water Development Board, which has had two years to do this. If the office were adequately staffed and funded it would have no difficulty having a representative present at all proceedings. The Department of Water Resources is not unique. The Public Utility Commission has budgeted an attorney charged with representing the public interest.

Just because certain people are uncomfortable with having a public interest advocate around is no reason to abolish the office. To do so goes against the public interest.

COMMENTARY: Section 5.181 of the Water Code, which this bill repeals, created in 1977 "an office of public interest to insure that the department promotes the public's interest and is responsive to citizens. Public interest includes but is not limited to environmental quality and consumer protection." The code specifies that the office shall be headed by a public interest advocate appointed by the Water Commission and the Water Development Board, that the advocate shall "be a party to all proceedings before the department," and that the office "shall be adequately staffed to carry out its function under this code."